

**Recommendation for Council Action – Backup  
Floodplain Variance Request – 1512 W Koenig Ln**

**SUMMARY OF FINDINGS:**

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The proposed development is the construction of three parking spaces at existing ground level. The applicant's engineer submitted an engineering report that indicates that the proposed development will not cause adverse flooding impacts to upstream or downstream properties.
2. PROPOSED PARKING DOES NOT MEET CODE REQUIREMENTS. Since the proposed parking is located within the 25-year floodplain and exceeds both the average allowed depth as well as the maximum allowed depth of flooding, staff cannot approve this application administratively.
3. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The proposed parking spaces could be elevated by structured elements above the floodplain elevation. Therefore, there is not a hardship condition.

**APPLICABLE CODE AND VARIANCES REQUESTED**

- I. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3  
Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

***VARIANCE REQUESTED:*** The applicant requests a variance to Building Code Section G102.3 to allow increase in non-conformity by allowing additional parking in the 25-year and 100-year floodplains.

- II. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

***VARIANCE REQUESTED:*** The applicant requests a variance to eliminate the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain. The applicant proposes to dedicate a drainage easement to the full extent of the floodplain less the existing building footprint.

- III. LDC Section 25-7-92 (A) and (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building or parking area on the 25-year and 100-year floodplains.

***VARIANCE REQUESTED:*** The applicant requests a variance to allow placement of parking spaces within the 25-year and 100-year floodplains of the Hancock Branch Tributary of Shoal Creek, which is in excess of the allowances made for parking under the Land Development Code.

**PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon consideration of the following prerequisites:

## PREREQUISITE

- 1) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

*Insufficient causes for issuing a variance may include the following:*

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

- 2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.

*The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact, financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.*

- 3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

## FINDING

- 1) **CONDITION IS NOT MET.**

There is not a technical justification as to why the applicant cannot build structured parking to elevate the parking spaces out of the floodplain.

- 2) **CONDITION IS PARTIALLY MET.** There is currently a residential use on this property. Failure to grant this variance would not affect the existing use. However, failure to grant this variance would affect the applicant's ability to satisfy the code requirements for parking for a commercial use property.

- 3) **CONDITION IS PARTIALLY MET.** The proposed development does not increase flood heights. However, the development does increase the threat to public safety because occupants' vehicles are at risk of flooding and may create a safety hazard when they come in contact with floodwater.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

*Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:*

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

4) **CONDITION IS MET.** The development consists of parking spaces only. There are no improvements to the building at this time that might require additional floodplain variance requests.

5) **CONDITION IS MET.** There is no building construction proposed as part of this site plan.